After repossession, the creditor will sell your car and apply the sale price (after deducting all repossession and sale expenses) against the amount you owe. If the net sales proceeds are more than the amount you owe, the creditor must pay you the “surplus.” Far more commonly, however, the net sale proceeds will be less than the amount you owe. When the net sale proceeds is less than the amount you owe, it is called a “deficiency.” If there is a remaining amount due, creditors will then come after you for the deficiency. When a lessor repossesses a leased vehicle, the result is the same. The car is sold and the lessor seeks a further amount called “an early termination charge.”

Once your car has been repossessed, your deficiency obligation is no longer backed up by any collateral, and should be treated as a low priority debt just like a hospital bill or a credit card debt. You should not pay it ahead of more pressing obligations, such as rent or utility bills. With a repossession already indicated on your credit record, an unpaid deficiency amount will not do much more to hurt your credit score.

Many defenses may be available to you if a creditor attempts to collect this deficiency through a lawsuit. The flip side of creditors being able to seize and sell your car without court supervision is that they have to strictly follow certain rules, and they often do not. Your legal rights are strong where the creditor or lessor trips up and you may be able to eliminate the amount demanded, or even end up with a positive recovery for yourself. But you will need help from a lawyer to effectively defend a lawsuit seeking a deficiency or early termination charge. Here are some defenses to look for (see National Consumer Law Center, [1](#) (9th ed. 2017), updated at [www.nclc.org/library](http://www.nclc.org/library) for more detail):

1. **Claims concerning the car or the credit terms.** Was the car a lemon, or did the dealer misrepresent the car’s quality or the credit terms?

2. **Is the car collateral on the loan?** Sometimes the creditor trips up on a technical requirement to make the car collateral for the debt. Does one spouse own the car and the other spouse is obligated on the loan? Is the car collateral for an earlier loan but not listed as collateral in a refinancing of the original car loan? If the creditor has not taken the car as collateral, it cannot repossess the car, even if you defaulted on a loan used to purchase the car.

3. **Were you in “default” when the car was seized?** If a creditor routinely accepts your late payments, the creditor may be prohibited from seizing the car just because a payment is late. It may have to notify you first that it will no longer accept late payments. You may not be in default if you gave the creditor notice you were withholding payments because the car was a lemon. Did the creditor repossess before your right to cure period had expired?

4. **Did the car’s repossession breach the peace?** When a seizure is wrongful, the creditor generally should not keep the car or collect a deficiency. The creditor may owe you money instead.

5. **Improper repossession sale or miscalculation of the deficiency.** If the creditor does not sell your car, but instead keeps it, the creditor cannot seek a deficiency. If the creditor sells the car, it must strictly follow correct procedures as to notices and the sale. Failure to follow the procedures exactly often can eliminate the deficiency.

You must be notified that the creditor will sell your car, describing the car, the nature of the sale, the time and place of a public auction or the date after which the car will be sold privately, and other important information. The sale cannot be too rushed and it cannot be overly delayed. **Every** aspect of the sale, including the advertising, the manner, the time, the place, and the terms must be “commercially reasonable.” Look out for low price sales to insiders.

Check to see if the creditor correctly calculated the amount of its claimed deficiency. If the creditor asks you to pay a deficiency after the car has been sold, in most states the creditor must send you a summary of its calculations, along with an address or phone number where you can get additional information.

6. **Auto leases.** Your defenses will be different if the car you leased is repossessed. The amount the creditor (also known as “the lessor”) claims you owe must follow the complex formula stated in the lease and must also be reasonable. The terms of the lease also must be properly disclosed and not misrepresented.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at [www.nclc.org/library](http://www.nclc.org/library)

Source URL: https://library.nclc.org/sd/1404

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